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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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SHERYL ORLIK, individually and on behalf of JARED  
ORLIK, minor child,

**ANSWER**

Plaintiffs,

08 CIV 1213 (WCC)

-against-

DUTCHESS COUNTY, STATE OF NEW YORK, ROBERT  
B. ALLERS, in his capacity as Commissioner of Social  
Services, ASHLEY TILTON, individually and as Caseworker,  
ANN WOOLSEY, individually and as Supervisor, NETTER E.  
THOMAS, individually and as Caseworker, DAVID GARCIA,  
individually and as a Supervisor, IRENE MAGALSKI,  
individually and as Deputy Commissioner, all of the  
DUTCHESS COUNTY DEPARTMENT OF SOCIAL  
SERVICES, and the DUTCHESS COUNTY DEPARTMENT  
OF SOCIAL SERVICES,

Defendants.

-----X  
The defendants, by their attorneys, McCabe & Mack, LLP, as and for their answer to  
the complaint of the plaintiffs respectfully show to the Court and allege as follows:

**INTRODUCTION**

1. Deny those allegations contained in paragraphs numbered "1" and "2" of the  
complaint.

**JURISDICTION AND VENUE**

2. With regard to paragraphs numbered "3" and "4" of the complaint, neither  
admit nor deny as state conclusions of law.

**PARTIES**

3. Deny knowledge or information sufficient to form a belief as to the truth of the  
allegations contained in paragraphs numbered "5" and "6" of the complaint.

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4. With regard to paragraphs numbered "9" and "10" of the complaint, neither admit nor deny as state conclusions of law.

5. Admit only that Allers is the Commissioner of the Department of Social Services. Neither admit nor deny remaining paragraph as state conclusions of law.

6. Deny those allegations contained in paragraphs numbered "12", "13", "14", "15" and "16" of the complaint.

### **FACTS**

7. With regard to paragraph "17", admit but note additional information was provided in the report.

8. Deny those allegations contained in paragraphs numbered "19", "20", "21", "22", "23", "24", "25", "26", "27", "28", "29", "30", "31", "32", "33", "34", "35", "37", "38", "39", "40", "41", "52", "45", "46", "49", "50", "51" and "52" of the complaint.

9. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs numbered "36" and "44" of the complaint.

10. With regard to paragraphs numbered "43" of the complaint, neither admit nor deny and refer the Court to the Family Court proceeding.

11. With regard to paragraphs numbered "47" and "48" of the complaint, neither admit nor deny and refer to the administrative proceeding.

### **COUNT ONE** **(Substantive due process-wrongful removal)**

12. Repeat, reiterate and reallege each and every denial to each and every allegation contained in paragraphs numbered "1" through "52" and incorporated by reference in paragraph "53" of the complaint as if the same were more fully set forth herein at length.

13. Deny those allegations contained in paragraphs numbered "54", "55", "56" and

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"57" of the complaint.

**COUNT TWO**  
**(Procedural Due Process)**

14. Repeat, reiterate and reallege each and every denial to each and every allegation contained in paragraphs numbered "1" through "57" and incorporated by reference in paragraph "58" of the complaint as if the same were more fully set forth herein at length.

15. Deny those allegations contained in paragraphs numbered "59", "60" and "61" of the complaint.

**COUNT THREE**  
**(Substantive due process wrongful custody of child)**

16. Repeat, reiterate and reallege each and every denial to each and every allegation contained in paragraphs numbered "1" through "61" and incorporated by reference in paragraph "62" of the complaint as if the same were more fully set forth herein at length.

17. Deny those allegations contained in paragraphs numbered "63", "64" and "65" of the complaint.

**COUNT FOUR**  
**(Substantive due process malicious prosecution)**

18. Repeat, reiterate and reallege each and every denial to each and every allegation contained in paragraphs numbered "1" through "65" and incorporated by reference in paragraph "66" of the complaint as if the same were more fully set forth herein at length.

19. Deny those allegations contained in paragraphs numbered "67", "68" and "69" of the complaint.

**COUNT FIVE**  
**(Fourth Amendment)**

20. Repeat, reiterate and reallege each and every denial to each and every allegation contained in paragraphs numbered "1" through "69" and incorporated by reference

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in paragraph "70" of the complaint as if the same were more fully set forth herein at length.

21. Deny those allegations contained in paragraphs numbered "71", "72" and "73" of the complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

22. All individual defendants are entitled to absolute immunity.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

23. All individual defendants acted in good faith and are entitled to qualified immunity.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

24. All actions of defendants with regard to placement of the child in foster care were done with either Sheryl Orlik's consent, upon court order or both.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

25. Defendants followed established procedures in the New York Family Court Act, Article 6, which provided plaintiff's with adequate procedural due process under the 14<sup>th</sup> Amendment of the U.S. Constitution.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

26. The removal of Jared Orlik to foster care was pursuant to lawful court order and was thus privileged from suit.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

27. The complaint fails to state a claim.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

28. Punitive damages are not recoverable against a municipality.

**AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE**

29. Defendant Allers had no personal involvement in the matters set forth in the

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complaint.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

30. The Court lacks personal jurisdiction over the individual defendants due to an insufficiency in service of process.

WHEREFORE, the defendants demand judgment dismissing the complaint of the plaintiff herein, plus the costs and disbursements of this action and for such other and further relief as to the Court may seem just and proper.

DATED: Poughkeepsie, New York  
April 28, 2008

Yours, etc.

McCABE & MACK LLP

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